

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KENNETH KNUTSON,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. DISM-03-0081

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member. The hearing was held in the Superintendent's conference Room at Washington State Penitentiary, Walla Walla, Washington, on October 5 and 6, 2004.

1.2 **Appearances.** Appellant Kenneth Knutson was present and was represented by Spencer Thal, General Counsel for Teamsters Local 117. David La Raus, Assistant Attorney General, represented Respondent Department of Corrections.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal. Respondent alleges that Appellant was unable to successfully complete the in-training requirements for advancement in an in-training series as a Correctional Officer 2 during his trial service period.

II. FINDINGS OF FACT

2.1 Appellant Kenneth Knutson was a permanent employee for Respondent Department of Corrections. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on September 12, 2003.

2.2 Effective June 19, 2002, the Department of Corrections appointed Appellant to an in-training appointment as a Correctional Officer (CO) 1 at the Washington State Penitentiary. As a probationary CO 1, the department required Appellant to successfully complete the Correctional Officer Academy, a four-week training, as well as a 12-month probationary period/in-training period. Upon successful completion of these requirements, Appellant would advance to the CO 2 class, and be required to complete a six-month trial service period prior to gaining permanent status as a CO 2. As a part of its training program, the department assigned experienced officers to mentor Appellant and enable him to take the skills taught in the Correctional Academy and apply them to his day-to-day tasks. This period of training, known as COACH, allowed the officers monitor Appellant's progress and provide him with feedback.

2.3 Sergeant Charles Gillespie performed Appellant's evaluation for the period from June 19, 2002, to October 19, 2002. During this time period, Sergeant Gillespie addressed some problems with Appellant performance, such as Appellant forgetting routine information and failing to maintain control of his keys and secure emergency doors. However, Sergeant Gillespie believed these issues could be resolved with additional training, and he evaluated Appellant's overall performance as satisfactory.

1 2.4 Appellant completed his one-year probationary period as a CO 1 and automatically
2 advanced to the CO 2 level and began to serve his six-month trial service period.

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4 2.5 Sergeant Anthony Serven supervised Appellant two days a week, beginning in
5 approximately February 2003. Sergeant Serven acted as a "job coach." Other coaches that worked
6 with Appellant were officers Scott Lowder and Ronald Spivey.

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8 2.6 Sergeant Serven, Officer Lowder, and Officer Ronald Spivey credibly testified regarding
9 their observations of Appellant's performance, including Appellant's failure to actively and
10 consciously observe staff and inmates in his span of control, his poor judgment and his need for
11 constant direction regarding correctional officer duties. They also described Appellant's difficulties
12 retaining and recalling routine information, such as gate times and daily radio call times and his
13 need for constant retraining. The officers also described Appellant as intelligent, cooperative,
14 receptive to their feedback, and willing to comply with their directives; however, they developed
15 concerns with Appellant's ability to act independently and/or under stress during an emergency
16 situation.

17
18 2.7 Sergeant Serven met with Appellant on numerous occasions to provide him with feedback
19 and reiterate performance expectations. Appellant showed temporary improvement; however, his
20 performance typically deteriorated.

21
22 2.8 Sergeant Serven completed Appellant's performance evaluation for period of January 20,
23 2003, through April 20, 2003. Sergeant Serven addressed Appellant's failure to retain routine daily
24 activities; his lack of judgment during emergent/non-emergent situations; and his need to maintain a
25 security conscience mind when dealing with inmates by not becoming overly friendly with them.

1 2.9 On May 23, 2003, Sergeant Serven and Sergeant Ronald Benjamin, Correctional Specialist,
2 met with Appellant to discuss their concerns with Appellant's performance. During the meeting,
3 they gave Appellant specific work expectations and informed him that failure to meet these
4 expectations could result his failure to pass the trial service period.

5
6 2.10 Sergeant Serven completed Appellant's performance evaluation for period of April 21,
7 2003, to June 30, 2003. Sergeant Serven rated Appellant performance as unsatisfactory, and noted
8 that Appellant's observation skills continued to be lacking and he continued to be inattentive to
9 staff members' involvement among inmates.

10
11 2.11 The Board was presented with other credible evidence to support Appellant's performance
12 deficiencies. Sergeant Charles Gillespie described a June 17, 2003, incident in which he observed
13 Appellant's inattentiveness to officers conducting an inmate count. Appellant was performing
14 paperwork at his desk rather than observing staff performing count procedures. Officer Terri
15 Warren described an incident during which Appellant failed to be responsive to an officer who was
16 having difficulty restraining an inmate. On another occasion, Appellant failed to properly restrain
17 an inmate involved in a fight. Sergeant Ronald Montoya also described Appellant's inability to
18 retain information and his failure to pay attention to his surroundings.

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20 2.12 After reviewing the information provided to him regarding Appellant's performance
21 deficiencies and the officers' concerns, Richard Morgen, Superintendent, concluded that Appellant
22 failed to perform the full range of security work required of a CO 2. Mr. Morgen found that
23 Appellant demonstrated he could learn the necessary competencies but that he was unable to apply
24 them consistently in his day-to-day activities. Mr. Morgen determined that Appellant demonstrated
25 he was ineffective in his performance as a correctional officer and created serious security issues.
26 By letter dated August 29, 2003, Mr. Morgen notified Appellant of his dismissal effective at the end

1 of his shift on September 12, 2003. Mr. Morgen cited Appellant's performance deficiencies and his
2 inability to successfully complete the in-training requirements necessary for advancement in his in-
3 training series as a CO 2 in his trial service period.

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5 2.13 WAC 356-30-135, In-training appointments, indicates as follows:

6

7 6) Employees will serve a probationary period or trial service period at each level
8 within the in-training series. When employees are in their probationary or trial
9 service period and are advanced to the next highest level in the in-training class
series, they shall complete the terms of the original probationary or trial service
period.

10 (7) Employees who fail to progress through each level of the in-training series
11 will be subject to the following actions:

12 . . .

13 (c) Employees with permanent status in an in-training position: Employees
14 who have completed their probationary or trial service period but are unsuccessful
15 in attaining subsequent advancement through the in-training series may be
16 removed from the in-training series under the provisions of WAC 356-34-010.
This does not preclude the employee's eligibility for transfer or voluntary
demotion.

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18 2.14 The parties stipulated that Appellant did not have reversion rights to any other
19 classifications.

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21 **III. ARGUMENTS OF THE PARTIES**

22 3.1 Respondent argues that Appellant's termination during his trial service period was
23 appropriate because he was unable to perform the functions of a correctional officer, and as a result,
24 posed a threat to those he was responsible for protecting. Respondent asserts that the department
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1 made every attempt to aid Appellant, but that Appellant was unable to improve his performance.
2 Under the circumstances, Respondent argues that termination was the appropriate sanction.

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4 3.2 Appellant asserts his initial performance evaluation was positive and it was not until after he
5 moved from a CO 1 position to a CO 2 position that incidents were compiled against him, including
6 incidents from when he was a CO 1. Appellant acknowledges that he made mistakes but asserts
7 that he always corrected his errors and never repeated them. Appellant asserts that the department
8 failed to employ a plan of progressive discipline and deprived him of the opportunity to correct his
9 performance.

10 11 **IV. CONCLUSIONS OF LAW**

12 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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14 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
15 the charges upon which the action was initiated by proving by a preponderance of the credible
16 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
17 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
18 Corrections, PAB No. D82-084 (1983).

19
20 4.3 Respondent has met its burden of proving that despite sufficient time and adequate training,
21 Appellant was unable to perform the necessary functions of a Correctional Officer 2. The evidence
22 presented supports that Appellant demonstrated an inability retain training information and to apply
23 that information to his daily job tasks. Appellant also exhibited an inability to remain alert to his
24 surroundings, the officers and inmates under his span of control.

1 4.4 The superintendent provided compelling testimony regarding his concern that Appellant's
2 performance deficiencies posed a threat to the institution and those he was responsible for
3 protecting. Under the facts and circumstances, Respondent has met its burden of proving that
4 termination during Appellant's trial service period was appropriate. Therefore, the appeal of
5 Kenneth Knutson should be denied.

6
7 **V. ORDER**

8 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Kenneth Knutson is denied.

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10 DATED this _____ day of _____, 2004.

11
12 WASHINGTON STATE PERSONNEL APPEALS BOARD

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14 _____
15 Walter T. Hubbard, Chair

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17 _____
18 Busse Nutley, Vice Chair

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20 _____
21 Gerald L. Morgen, Member